

enabling publication fails as a reference under 102(b). The cited printed publication does not contain every material element of the claimed invention.

Further, foreign public or commercial activity fails as a barring activity under 102(b). Combining these two "non-references" to make a rejection under 102(b) is not proper.

In order to properly reject the claim under 35 U.S.C. 102(b), every element of the claimed invention must be found in a single reference, as required under *LeGrice*. In the present case, the cited Plant Breeder's Rights certificate was taken in combination with the sale in the Czech Republic as being sufficient to bar patentability. Therefore, the reference was not a single reference and rejection is improper.

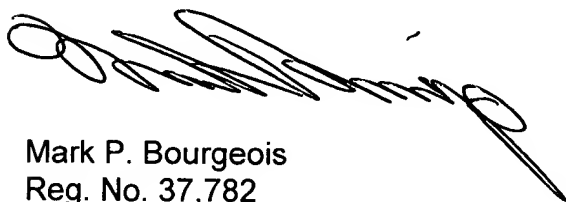
A person skilled in the art of plant breeding would not know to try and obtain plants of Piccolo after reading the Australian PBR for Plangen. This is because the breeder would not know that Piccolo is the same plant as Plangen.

Further, a person skilled in the art of plant breeding would not know to try and obtain plants of Piccolo in order to practice the invention of Pink Poppet. This is because the breeder would not know that Piccolo is the same plant as Pink Poppet.

It is respectfully requested that the 102b rejection be withdrawn.

The claimed plant is now believed to be in condition for allowance.

Respectfully submitted,



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